IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 223 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri M.V.Limaye for the Appellant.

Ms.Surekha Jangam for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 10th August, 2004.

P.C.:

1. Heard the learned Counsel appearing for the parties. The learned Counsel for the Appellant submitted that the suit filed by the Respondent was on the footing that the suit property was allotted to the Respondent by the Pune Municipal Corporation and in fact no evidence was led to prove the said fact. He submitted that the title claimed by the Respondent was on the basis of the alleged allotment by the Pune Municipal Corporation and as no evidence was led by the Respondent, the suit ought to have been dismissed.

2. He submitted that the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was applicable to the land on which the suit structure was situated and therefore, permission of

the Competent Authority was required to be obtained. He therefore submitted that in the absence of the permission the suit itself was not maintainable.

3. The Appellant had filed Civil Suit No.1693 of 1994 against the Respondent herein and one another in respect of the same premises. In the said suit, prayer was for specific performance of the alleged agreement between the parties for transfer of the premises in question in favour of the Appellant. The said suit is dismissed in so far as relief of specific performance is concerned and the decree passed in the said suit has attained finality. In paragraph 2 of the plaint in the said suit, the Appellant admitted that the Respondent herein is owner of the property in dispute. In view of this position, the Appellate Court has invoked the principle of estoppel and has held that the Appellant cannot now contend that the Respondent is not the owner of the suit property. In so far as the second contention is concerned, I find from both the Judgments that a copy of the notification under section 4 of the said Act of 1971 was not produced to show that the land on which suit structure is situated is declared as a slum. Hence there is no substance in the said contention.

4. No fault can be found with the findings

recorded by the Courts below. After the suit filed by the Appellant for specific performance was dismissed, the Appellant has not shown any other independent right to possess the property in question. There is neither any perversity nor illegality in the findings recorded by the Court below. No substantial question of law arises in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.